

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

## MISSOULA DIVISION

**FILED**

FEB 10 2010

PATRICK E. DUFFY, CLERK

By \_\_\_\_\_  
DEPUTY CLERK, MISSOULA

RICHARD ALLEN SCHMID,

Petitioner,

vs.

MONTANA SUPREME COURT,

Respondent.

Cause No. CV 10-9-M-DWM-JCL

## RECOMMENDATION AND ORDER

On January 25, 2010, Petitioner Richard Allen Schmid moved to proceed in forma pauperis with a petition for writ of mandamus directed to the Montana Supreme Court. Schmid asks this Court to order the Montana Supreme Court and the Eleventh Judicial District Court to “hear, consider, and then address the actual predicated issue” that he has asked them to consider. Pet. (doc. 1) at 2.

“The federal courts are without power to issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties.” Clark v. State of Washington, 366 F.2d 678, 681 (9th Cir. 1966). Schmid’s action is frivolous and wasteful of this Court’s time, energy, and resources.

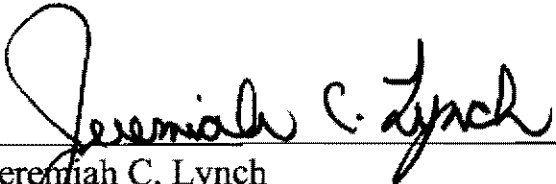
“A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” Tripati v. First Nat’l Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987). Schmid’s motion to proceed in forma pauperis should be denied. If he fails to pay the \$350.00 filing fee within seven calendar days, the action should be dismissed for failure to pay the filing fee.

Schmid is not entitled to a ten-day period to object. Minetti v. Port of Seattle, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). This Order will be entered directly upon endorsement by the District Court.

### RECOMMENDATION

The following Order should be issued by Judge Molloy.

DATED this 10th day of February, 2010.

  
\_\_\_\_\_  
Jeremiah C. Lynch  
United States Magistrate Judge

### ORDER

1. The Recommendation of Judge Lynch is ADOPTED.
2. Schmid’s motion to proceed in forma pauperis (doc. 2) is DENIED.

3. Schmid may pay the full filing fee of \$350.00 within seven (7) days of the date of this Order.

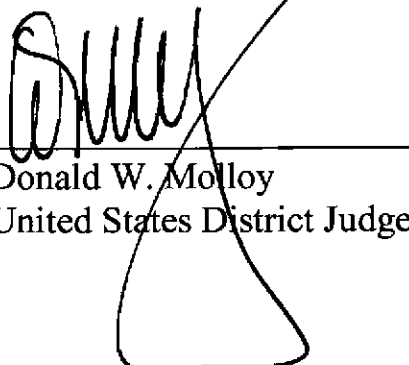
4. The Petition (doc. 1) will be DISMISSED and the Clerk of Court will close the file if full payment of the filing fee is not received within ten (10) calendar days of the date of this Order. Any fee received out of time will be returned to Schmid.

5. If Schmid files a notice of appeal and/or moves to proceed in forma pauperis on appeal, the Clerk of Court shall immediately advise him and the court of appeals, pursuant to Fed. R. App. P. 24(a)(4)(B), that this Court CERTIFIES the appeal is not taken in good faith.

6. No motions for reconsideration or rehearing will be entertained. The Clerk of Court is directed to discard any such motions.

7. If Schmid timely pays the full \$350.00 filing fee, the Clerk of Court shall immediately so advise the Court.

DATED this 15<sup>th</sup> day of February, 2010.



Donald W. Molloy  
United States District Judge